



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

9 In re

10 RICK GALINDO,

11 Debtor.  
12

06-24663-C-7  
Case No. ~~06-4663-C-7~~

MC No. JMP-1

13  
14 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
15 **ON MOTION FOR RELIEF FROM AUTOMATIC STAY NOT INTENDED FOR**  
16 **PUBLICATION**

17 These findings of fact and conclusions of law, which are  
18 not intended for publication, are rendered in this contested  
19 matter pursuant to Federal Rule of Civil Procedure 52 as  
20 incorporated by Federal Rules of Bankruptcy Procedure 7052 and  
21 9014.

22 Jurisdiction

23 Jurisdiction is founded upon 28 U.S.C. § 1334. This is  
24 a core proceeding. 28 U.S.C. § 157(b)(2)(G).  
25

26 Findings of Fact

27 Debtor filed his voluntary chapter 7 petition on  
28 November 8, 2006. He scheduled real property commonly known as

1 10429 Forest Ridge Court, Stockton, CA 95209 ("property") as  
2 property of the estate. The first meeting of creditors was  
3 held on December 7, 2006. The chapter 7 trustee filed a report  
4 finding that there is no property available for distribution  
5 from the estate over and above that exempted by the debtor.  
6 Debtor was discharged from all dischargeable debts on February  
7 7, 2007.

8 On January 22, 2007, EMC Mortgage Corporation ("movant")  
9 filed a motion, notice, and declaration requesting that this  
10 court vacate the automatic stay to permit movant to foreclose  
11 upon the property. The fair market value of the property is  
12 approximately \$479,000.00. Movant has a lien on the property  
13 in the approximate amount of \$438,864.24. There are other  
14 liens against the property in the approximate amount of  
15 \$53,000.00.

16 No opposition to the motion was filed within the time  
17 prescribed by Local Bankruptcy Rule 9014-1(f)(1). The parties  
18 have consented to taking evidence by affidavit and have not  
19 demonstrated that there is any disputed material factual issue.  
20 See L. Bankr. R. 9014-1(f)(1). The evidentiary record is  
21 closed. Id.

22 Upon review of the record, the court determined that  
23 the written record was adequate and that no oral argument is  
24 necessary.

#### 25 Conclusions of Law

26 The automatic stay of acts against debtor in personam  
27 expires when the debtor is granted a discharge. 11 U.S.C.  
28

1 § 362(c)(2)(C). Acts against property of the estate remain  
2 stayed until the earliest of the time when the bankruptcy case  
3 is closed, dismissed, or the property ceases to be property of  
4 the estate. 11 U.S.C. § 362(c). The automatic stay may be  
5 terminated earlier if debtor fails to protect the secured  
6 party's interest adequately, § 362(d)(1), and, with respect to  
7 a stay of an act against property, debtor does not have equity  
8 in the property, § 362(d)(2)(A), and the property is not  
9 necessary to an effective reorganization. 11 U.S.C. §  
10 362(d)(2)(B). The issue of whether the property is necessary  
11 to an effective reorganization is not considered in a chapter 7  
12 case because no reorganization is contemplated in a chapter 7  
13 case.

14 Although the debtor does not appear to have any equity  
15 in the property, since the debtor was granted a discharge, the  
16 automatic stay has expired as to the debtor. Thus, the motion  
17 insofar as it is directed at the interest of the debtor is moot  
18 and will be denied.

19 However, the motion will be granted as to the interest  
20 of the trustee.

21 An appropriate order will issue.

22 Dated: February 14, 2007

23  
24   
25 UNITED STATES BANKRUPTCY JUDGE  
26  
27  
28

CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

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Dated: 2/15/07

  
Deputy Clerk